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NORTON, SENATORS, CIVIL RIGHTS LEADERS AT NEWS CONFERENCE AGAINST FILIBUSTER CHANGE AND JUDGES HOSTILE TO CIVIL RIGHTS

Washington, DC—Congresswoman Eleanor Holmes Norton (D-DC) today spoke for the 43 member Congressional Black Caucus (CBC) at a Senate news conference called by civil rights leaders on Senate Republican threats to change filibuster rules to force votes on judges “whose records of opposition to civil rights could not be clearer.”

Along with Norton, the other speakers were Senator Edward Kennedy (D-MA), a member of the Senate Judiciary Committee; Judiciary Ranking Member Patrick Leahy (D-VT); Julian Bond, Chairman of the NAACP; Wade Henderson, Executive Director of the Leadership Conference on Civil Rights; and Judy Lichtman, Vice Chair of the Leadership Conference on Civil Rights & Senior Advisor to the National Partnership for Women & Families.

At the news conference Norton said that the best way to understand the danger of the nuclear option is to inspect the records of the judges whose documented extremism make filibuster or withdrawal of the nominations the only options. “They have in common nearly identical, across-the-board, far-right dogmatic views that displace the discipline of settled law,” she said. Among the most unacceptable because of their civil rights records are California Supreme Court Justice Janice Rogers Brown, re-nominated to the U.S. Court of Appeals for the D.C. Circuit although her nomination failed during the last Congress; and Federal District Court Judge Terrence Boyle of North Carolina, nominated to the U.S. Court of Appeals for the Fourth Circuit.

Norton said that in the name of protecting the rights of the Senate minority, the filibuster was used almost exclusively to defeat the civil rights of black Americans for nearly a hundred years. “Now that the rights of African Americans are again at stake with President Bush’s judicial nominations, Republicans propose to violate the rules that were good enough to delay African American freedom for nearly a century. We cannot tolerate and we will not tolerate this regression.” Norton said.

The full text of Norton’s remarks follows.

I am speaking this morning as the Judicial Nominations Chair of the Congressional Black Caucus for the 43 member Congressional Black Caucus and for CBC Chair Mel Watt. Most members of the House will not return until this evening. The Congressional Black Caucus will have a press conference with the chair and our members participating in the near future.

The CBC has already strongly urged the Senate to retain the filibuster. Several of us met with Senator Harry Reid soon after he became Leader. Chairman Watt and I met with the Senate Democratic leadership and later with the full Democratic Caucus at their luncheon to press the importance of retaining the rights of the minority. In the name of protecting the rights of the Senate minority, the filibuster was used almost exclusively to defeat the civil rights of black Americans for nearly a hundred years. The filibuster rule was inviolate and impenetrable, no matter how basic the denial of our rights – whether of life itself, as with the lynching filibusters, or of that most basic of civil rights in a democracy – the right to vote, finally won with the Voting Rights Act only after a filibuster that was broken with 67 votes in 1965, notwithstanding the passage of the 14th and 15th Amendments a hundred years earlier. Now that the rights of African Americans are again at stake with President Bush’s judicial nominations, Republicans propose to violate the rules that were good enough to delay African American freedom for nearly a century. We cannot tolerate and we will not tolerate this regression. We appreciate that the American people have indicated in polls their strong support for the rights of the minority in the Senate and for the rights of minorities, their fellow Americans, in our country.

The best way to understand the danger of the nuclear options is to inspect the records of the judges whose documented extremism make filibuster or withdrawal of the nominations the only options. They have in common nearly identical, across-the-board, far-right dogmatic views that displace the discipline of settled law. The two who are particularly unacceptable to people of color are Janice Rogers Brown, a California Supreme Court judge and an African American re-nominated to the U.S. Court of Appeals for the D.C. Circuit and Terrence Boyle, a Fourth Circuit District Court judge nominated to the U.S. Court of Appeals for the Fourth Circuit.

Regrettably, Justice Brown’s service on the California Supreme Court has already borne out the prediction of the California Association of Black Lawyers who in originally opposing her nomination predicted that “her appointment may be detrimental to Black America” with nothing short of “far reaching consequences for generations to

come.”  Her decisions on racial discrimination have been shocking.  Two cases illustrate the mind set she would bring to the Court of Appeals.

When her court found that the First Amendment did not keep a court from barring racial epithets in the workplace, Justice Brown suggested that Title VII of the 1964 Civil Rights Act also could not constitutionally bar such racially derogatory on-the-job speech, notwithstanding Supreme Court precedent to the contrary (Aguilar v. Avis Rent-a-Car Systems, Inc., 980 P.2d 846 (1999)).  Moreover, Justice Brown’s view regarding the role of law in eliminating discrimination is longstanding, continuing and systematic.  In one 2005 case, People v. Robert Young, 34 Cal. 4th 1149, she went out of her way to pronounce a unique and discredited view, deprecating the role of race in legal cases.  Contradicting an explicit holding in 1985 California Supreme Court case, she found that black women are not a “cognizable group” that might encounter group discrimination.  Perhaps the most revealing critique of Judge Brown’s fixed views on race and American law came from California Chief Justice Ronald George, who, like Justice Brown, was appointed by Governor Pete Wilson.  In a race case where Brown and George were on the same side, Justice George nevertheless called her concurrence a “serious distortion of history” by equating segregationist practices with programs to eliminate discrimination.  He warned that her views on race “will be widely and correctly viewed as presenting an unfair, inaccurate caricature of affirmative action programs” and are “likely to be viewed as less than evenhanded” (Hi-Voltage Wire Works, Inc. v. City of San Jose, 12 P.3d, 1068, 1093-95).

Justice Brown, who cites only one federal case in her ten most significant litigated cases, not only lacks the federal experience needed for the D.C. Circuit in particular.  In racial and other federal cases that are more prominent in the D.C. Circuit than any others, she has shown disrespect for federal law and settled principles.  President Bush has chosen to nominate to this circuit designated to decide matters of special federal importance a judge who was rated not qualified by 20 of the 23 voting members of the California Bar Commission when she was re-nominated to the California Supreme Court, in part because she ignored established precedent and inappropriately placed her personal and philosophical views in her opinions, according to the Commission.  At the federal level, she received a rare ABA mixed qualified (majority) and not qualified (minority) rating.  Janice Rogers Brown is unqualified to sit on the D.C. Circuit and her view on race makes her unfit to sit on any federal court today.  Her nomination is an insult to people of color that would be compounded by a violation of the filibuster rule to enable her to serve.

The documented hostility of Judge Terrence Boyle to the rights of African Americans should make the President’s nomination of Judge Boyle or his approval by the Senate unthinkable.  Judge Boyle has spent two decades laying out views that show dogmatic hostility to civil rights.  Judge Boyle has shown an undisguised determination to resist federal statutes and precedents and a preference for states’ rights and state “culture,” regardless of federal laws.  Of his 150 reversals, many of them civil rights and criminal justice cases, by his own conservative Fourth Circuit, one of Judge Boyle’s case is a case study in his approach to the responsibilities of a federal judge.  In a Voting Rights Act case, Cromartie v. Hunt, Judge Boyle granted summary judgment to white voters who challenged the drawing of North Carolina’s 12th Congressional District before any discovery or evidentiary hearing.  When reversed in an opinion written by Justice Clarence Thomas, Judge Boyle again ruled that the 12th District was racially unconstitutional, using the language and reasoning the Supreme Court had rejected in the original case.  On the second appeal, the Supreme Court again reversed and admonished Judge Boyle for “precisely the kind of evidence we said was inadequate the last time this case was before us.”  Judge Boyle has made no secret of his bias against the role of federal courts in enforcing laws protecting African Americans and others covered by federal laws.

Justice Janice Rogers Brown and Judge Terrence Boyle epitomize unfit judges.  The rules of the Senate must not be violated to allow the approval of judges whose records of opposition to civil rights could not be clearer.